

ESTTA Tracking number: **ESTTA687694**

Filing date: **08/05/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Bionatural International Corp.
Granted to Date of previous extension	08/05/2015
Address	3321 NW 82 Avenue Doral, FL 33122 UNITED STATES
Attorney information	Cheryl A. Clarkin, Daniel J. Holmander Adler Pollock & Sheehan P.C. One Citizens Plaza 8th Floor Providence, RI 02903 UNITED STATES cclarkin@apslaw.com,dholmarder@apslaw.com Phone:401-274-7200

Applicant Information

Application No	86444081	Publication date	04/07/2015
Opposition Filing Date	08/05/2015	Opposition Period Ends	08/05/2015
Applicant	BNA Burz North America LLC 906 Wateredge Place Hewlett Harbor, NY 11557 UNITED STATES		

Goods/Services Affected by Opposition

Class 044. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Podiatry services; Foot care services, namely, debridement and removal of hardened skin and nails from feet; Foot care services, namely, smoothing rough skin on feet
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	86464103	Application Date	11/25/2014
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	PEDIPEEL MAGIC		

Design Mark	PediPeel Magic
Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 2014/10/01 First Use In Commerce: 2014/10/01 Non-medicated foot soaks; Skin care preparations, namely, fruit acid peels for skin

Attachments	86464103#TMSN.png(bytes) PEDIPEEL opposition.pdf(183150 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	<i>/cac/</i>
Name	Cheryl A. Clarkin, Daniel J. Holmander
Date	08/05/2015

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Bionatural International Corp.)	
)	
Opposer,)	Opposition No. _____
)	
v.)	Application Serial No.
)	86/444081
)	
BNA Burz North America LLC,)	
)	
Applicant.)	
)	

NOTICE OF OPPOSITION

Bionatural International Corp. (“Opposer”), a corporation organized under the laws of Florida, having a place of business at 3321 NW 82 Avenue, Doral, Florida 33122, believes that it will be damaged by registration of PEDIPEEL (“Mark”), which Mark is the subject of U.S. Federal Trademark Application Serial No. 86/444081 (“Application”) filed by BNA Burz North America LLC, a limited liability company of New York, having an address at 906 Wateredge Place, Hewlett Harbor, New York 11557 and which Mark was published for opposition in the *Official Gazette* on April 7, 2015. An extension of time was granted by the Trademark Office for Opposer to file an Opposition by August 5, 2015.

The grounds for the opposition are as follows:

1. Opposer is a corporation duly organized under the laws of the state of Florida, having a place of business at 3321 NW 82 Avenue, Doral, Florida 33122.

2. Opposer is the owner of U.S. Trademark Application Serial No. 86/464103 for the mark PEDIPEEL MAGIC for non-medicated foot soaks; skin care preparations, namely, fruit acid peels for skin, in International Class 3. A current printout of information from the electronic database records of the USPTO showing the current status and title of the application accompanies this Notice of Opposition.

3. Applicant seeks to register the mark PEDIPEEL for podiatry services; foot care services, namely, debridement and removal of hardened skin and nails from feet; foot care services, namely, smoothing rough skin on feet, in International Class 44.

4. The opposed Application was filed on November 4, 2014 under Section 1(b) of the Trademark Act.

5. Upon information and belief, Applicant has made no use of the mark PEDIPEEL as a trademark in the United States.

6. Since at least as early as October 1, 2014, and prior to Applicant's filing date, Opposer has used the mark PEDIPEEL MAGIC in connection with non-medicated foot soaks; skin care preparations, namely, fruit acid peels for skin.

7. Opposer's goods in connection with its PEDIPEEL MAGIC trademark are highly related to the podiatry services; foot care services, namely, debridement and removal of hardened skin and nails from feet; and foot care services, namely, smoothing rough skin on feet identified in Application Serial No. 86/444081 for the mark PEDIPEEL. On information and belief, Opposer's goods and Applicant's services are offered to the same classes of customers through the same channels of trade.

8. Applicant's Mark, PEDIPEEL, is confusingly similar to Opposer's PEDIPEEL MAGIC mark, and is likely to cause confusion.

9. If Applicant uses the mark PEDIPEEL with the services identified in Application Serial No. 86/444081, such use would be likely to cause confusion, mistake, and/or deception of the relevant trade and public. Customers and potential customers are likely to believe that Applicant's services offered under the mark emanate from, or are licensed or approved by, Opposer, when that is not the case. Such confusion, mistake, and/or deception would be a source of damage to Opposer.

10. If Applicant is granted the registration herein opposed, it would thereby obtain a *prima facie* right to use the mark PEDIPEEL which is confusingly similar to the Opposer's mark, which would be a further source of damage to Opposer.

11. Applicant's mark, PEDIPEEL, is likely to cause confusion with Opposer's trademark PEDIPEEL MAGIC, and, therefore, Applicant's Mark should be refused registration, rendered unenforceable, and/or restricted under Section 2(d) of the Trademark Act.

WHEREFORE, Opposer believes that it will be damaged by registration of said Mark, PEDIPEEL, and prays that this Opposition be sustained in favor of Opposer, that Application Serial No. 86/444081 be refused registration, rendered unenforceable, and/or restricted based upon at the least the grounds set forth above.

The Applicant reserves the right to add additional counts beyond those recited above.

Respectfully submitted,

Bionatural International Corp.

/cheryl a. clarkin/

Cheryl A. Clarkin, Esq.

Daniel J. Holmander, Esq.

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Dated: August 5, 2015

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **NOTICE OF OPPOSITION** has been served on Applicant and Applicant's counsel, at the following addresses of record, by first class mail, postage prepaid, this 5th day of August 2015:

Applicant

BNA Burz North America LLC
906 Wateredge Place
Hewlett Harbor, New York 11557

Applicant's Counsel

Mark Terry, Esq.
801 Brickell Avenue, Suite 900
Miami, Florida 33131

/cheryl a. clarkin/

Cheryl A. Clarkin, Esq.
Counsel for Opposer



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PediPeel Magic

Word Mark PEDIPEEL MAGIC
Goods and Services IC 003. US 001 004 006 050 051 052. G & S: Non-medicated foot soaks; Skin care preparations, namely, fruit acid peels for skin. FIRST USE: 20141001. FIRST USE IN COMMERCE: 20141001
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 86464103
Filing Date November 25, 2014
Current Basis 1A
Original Filing Basis 1A
Owner (APPLICANT) Bionatural International Corp CORPORATION FLORIDA 3321 NW 82 AVE Doral FLORIDA 33122
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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